

No. 84711-8

SUPREME COURT OF THE STATE OF WASHINGTON

CARLOS JOHN WILLIAMS

V.

DEPARTMENT OF CORRECTIONS

CLERK
2010 JUN 23 AM 7:55
STAFF WASH DC

MOTION FOR DISCRETIONARY REVIEW

CARLOS WILLIAMS
DOC# 973053
P.O. BOX 514
MONROE, WA 98272

A. Identity of the Petitioner

Carlos John Williams, asks this court to accept review of the decision designated in Part B of this motion.

B. Decision

The Petitioner seeks review of the decision by the trial court to transfer this matter to the Court of Appeals as Personal Restraint Petition. Petitioner also seeks review of the decision by the trial court to deny the Petitioner's motion submitted waiving filing fee and to proceed in forma pauperis. These decisions were filled on April 19, 2010.

The above decisions restrained the Petitioner from seeking "redress" of grievance. A copy of the decision is attached in the Appendix: A. Because, the matter was transferred to the Court of Appeals as a Personal Restraint Petition by the trial court this was clear error, as pointed out in the Court of Appeals decision. This matter is a civil complaint, and not a "unlawful restraint" issue. Appendix: B.

C. Issues Presented for Review

1. Whether the Petitioner should have had this matter proceed in the Superior Court and his motion to waive the filing fee should have been granted and he allowed to proceed in forma pauperis?

2. Whether the denial of the Superior Court to grant the Petitioner's motion for fee waiver and to proceed in forma pauperis violated his First Amendment right of the U.S. constitution to access the courts?

3. Whether this matter should be remanded back to the Superior Court for a full hearing on the merits of this civil complaint?

D. Statement of the Case

On April 1, 2010, Petitioner filed a complaint against the Department of Corrections for refusing to serve him dinner thus causing him to go to bed hungry and disstruant. The complaint raised a Eighth Amendment violation to the U.S. constitution. The compalint further alledged racial discrimiantion by the Defendant's staff for refusing to issue a sack lunch to Mr. Williams, but doing so for another inmate. Mr. Williams is African-american, the other inmate is caucasian.

On April 19, 2010, the court entered a decision to deny forma pauperis and fee waiver. The court then transfered the matter to the Court of Appeals. Which promptly dismissed the complaint.

E. Argument Why Review Should Be Accepted

The Petitioner is obviously being denied access to the court by the Superior Court. The legal authority relied upon to determine as to whether to grant or deny forma pauperis and waive filling fee is Neal v. Wallace, 15 Wn. App.506,550 P.2d 539. There are four things which must be met: 1)...actual not theoretical, indigency; (2) that ~~but~~ for such waiver a litigant would be unable to maintian the action; (3) that there are no alternative means available for procuring the fees; and (4) that plaintiff's claim is 'brought in good faith and with probable merit.'"

The Complaint, Motion, and Affidavit to proceed in forma pauperis contians all the above. See the original brief filed with the trial court.

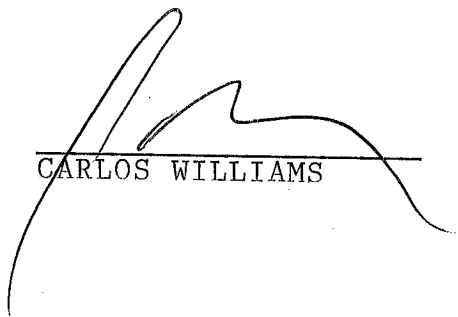
F. Conclusion

To deny the Petitioner's motion for fee waiver and forma pauperis is deny access to the court. This matter should be remanded to the trial court for a hearing on the merits.

F. Conclusion

To deny the Petitioner's motion for fee waiver and forma pauperis is deny access to the court. This matter should be remanded to the trial court for a hearing on the merits.

RESPECTFULLY SUBMITTED this 20th day of June 20, 2010



CARLOS WILLIAMS

FILED

2010 APR 20 AM 9:28

SONYA KRASKI
COUNTY CLERK
SNOHOMISH CO. WASH

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR
THE COUNTY OF SNOHOMISH

Carlos John Williams,
Petitioner,

vs.

Department of Corrections,
Respondent.

NO.

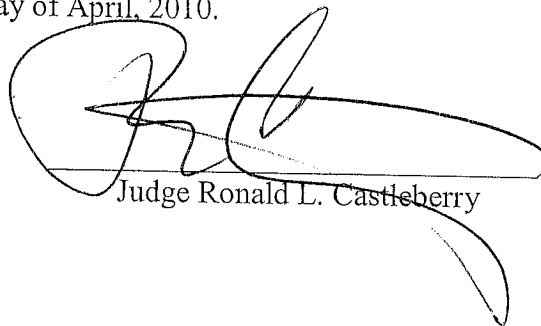
10 2 04200 6

ORDER

The Court having considered the records and files herein, hereby denies the defendant's motion to waive filing fee and proceed in forma pauperis.

Furthermore, the defendant's motion is transferred to the Court of Appeals, Division I, as a Personal Restraint Petition, under the Rules of Appellate Procedure 16.4.

SIGNED this 19 day of April, 2010.



Judge Ronald L. Castleberry

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

In the Matter of the Personal
Restraint of:

No. 65329-6-I

CARLOS JOHN WILLIAMS,

ORDER OF DISMISSAL

Petitioner.

Petitioner Carlos Williams has filed a personal restraint petition¹ seeking attorney fees and legal costs and \$150,000 in damages after he was ordered to his cell and missed his dinner on March 9, 2010. Williams complains that he did not receive dinner or a replacement sack lunch while another inmate received a sack lunch after missing dinner. In this setting, relief is available only if petitioner demonstrates he is currently subject to unlawful restraint. RAP 16.4. Williams does not describe any cognizable "restraint" or "disability" as a result of missing his dinner. And the financial remedy he seeks is beyond the scope of relief properly granted in a personal restraint petition. See In re Sappenfield, 138 Wn.2d 588, 595, 980 P.2d 1271 (1999).

Now, therefore, it is hereby

ORDERED that Williams's motion to appoint counsel is denied and the personal restraint petition is dismissed under RAP 16.11(b).

Done this 1st day of June, 2010.


Acting Chief Judge

FILED
COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
2010 JUN -1 AM 9:53

¹ Williams initially filed his claim for damages in the Snohomish County Superior Court, which transferred the matter to this court for consideration as a personal restraint petition.